

**Prepared by: Benefits and Entitlements Team  
Updated November 2005**

**For additional Information: (703) 696-6301 or DSN 426-6301  
FAX: (703) 696-4705 or DSN 426-4705**

**Individuals Returning to Work  
Following Receipt of  
Office of Workers' Compensation  
Program (OWCP)  
Benefits**

***A Guide for Human Resources Specialists***

**Defense Civilian Personnel Management Service  
Field Advisory Services Division  
1400 Key Boulevard, Suite B-200  
Arlington, VA 22209-5144**

## **Office of Workers' Compensation Program (OWCP) – Returning to Work**

Department of Labor (DOL) is responsible for adjudicating compensation claims and maintains the records of individuals in receipt of compensation. Upon an individual returning to work, compensation may terminate or continue as a loss of wage earning capacity (LWEC). The individual must receive the same career status as previously appointed to when the injury occurred.

The purpose of this document is to provide guidance on how the benefits and retirement are affected when an individual returns to work following receipt of compensation. The employing office has the responsibility of processing the benefits correctly, setting the correct retirement coverage, and counseling the employee on their options upon returning to work. The procedures and rules may be different depending on the individual's status while in receipt of compensation. We have prepared this guide separating the status into three categories:

- 1) Active employees on leave without pay (LWOP)
- 2) Former employees who did not apply or were not approved for disability retirement
- 3) Retired employees (approved disability retirement by the Office of Personnel Management (OPM) or applied for optional retirement)

### **ACTIVE EMPLOYEE -- LWOP STATUS**

#### **Retirement**

Retirement coverage continues during the LWOP period. Upon return to duty the retirement coverage remains the same and the employee is not eligible to elect FERS. The employee would only be eligible to elect FERS if they separated and returned to work after more than a 3-day break in service.

Typically, employees in a LWOP status are given 6 months credit in each calendar year. All LWOP outside of this 6-month period is not creditable for retirement purposes. However, in the case of an individual who is receiving compensation, the 6-month rule does not apply. Full credit is given as though the employee worked. Time spent in receipt of compensation is treated as a leave of absence. The employee will receive full credit during the period of LWOP in the annuity computation and high-3 average salary.

If the employee is working less than full-time and is in receipt of LWEC, the annuity will be computed as part-time service. This applies regardless of whether the employing office processes a change in work schedule Standard Form (SF) 50. Employees covered by the Civil Service Retirement System (CSRS) will receive a prorated annuity based on

the time actually worked on/after Apr 7, 1986. Employees covered by the Federal Employees Retirement System (FERS) will also be affected by the part-time annuity computation. Their entire annuity will be prorated using the actual time worked.

Nondeduction service credit rules apply, therefore, the employee would not be afforded anything more than what the employee would earn if the injury had not occurred. For example, an employee serving on a temporary appointment (FICA), - is injured on the job and in receipt of compensation, returns to work and later is appointed to a permanent position – Career-Conditional appointment (FERS) – the time in receipt of compensation is treated as nondeduction service and the applicable service credit rules apply.

**FERS** – FICA on/after Jan 1, 1989 – no credit  
FICA before Jan 1, 1989 – no credit unless deposit paid

**CSRS** – FICA on/after Oct 1, 1982 – no credit in annuity computation  
unless a deposit is paid  
FICA before Oct 1, 1982 – deposit paid or annuity will be reduced  
by 10% of any deposit amount owed

Employees covered by FERS who are receiving compensation during a period of LWOP will be eligible for an enhanced annuity computation if the sum of all qualifying periods of absence totals 2 months or more. The enhanced benefit is computed as follows:

- The regular annuity computed under the appropriate FERS annuity formula,

**Plus**

- The enhanced benefit computed by multiplying the number of years and full months of qualifying service by 1 percent.

The enhanced formula does not apply to the FERS disability annuity computed using 60 percent or 40 percent of the high-3 average salary.

### **Federal Employees Health Benefits (FEHB)**

If the FEHB enrollment was transferred to DOL and the employee returns to work on a full-time basis, the FEHB enrollment will be transferred back to the employing office. A return from LWOP status is a Qualifying Life Event (QLE) for purposes of premium conversion (PC) which means the employee has 60 days to change participation in PC. Waiving PC will allow the employee to cancel or change to self only at anytime. An employee who was not previously enrolled in FEHB may enroll within 60 days as long as the position conveys FEHB coverage.

### **Federal Employees' Group Life Insurance (FEGLI)**

When the employee returns to work (regardless of the work schedule) the employing office must notify OWCP/DOL by letter. The employing office must state the beginning and ending dates of the pay period the employee returned to work.

If an employee's FEGLI coverage terminated at the end of 12 months of LWOP and the employee was eligible to continue FEGLI coverage (5-year requirement), OPM should have received the SF 2821, Agency Certification of Insurance Status, along with the original FEGLI forms in the employee's Official Personnel Folder (OPF). Upon receipt, OPM established a file on the employee. Upon return to work, the employing office must notify the OPM Retirement Operations Center (ROC), P.O. Box 45, Attn: Life Insurance, Boyers, PA 16017-0045. The ROC will send the original life insurance forms back to the employing office.

If an employee's FEGLI coverage terminated at the end of 12 months of LWOP and the employee was ineligible to continue FEGLI coverage, the terminated coverage will be reinstated.

The value and cost of Basic life insurance and Option B will be based on the work schedule. This applies to all cases, even those when the employee is receiving LWEC. An employee who did not previously have FEGLI will not be allowed to elect it upon return to work. The employee may apply and request approval with the Office of FEGLI after obtaining a physical and completing the SF 2822, Request for Insurance.

### **Thrift Savings Plan (TSP)**

The employee's TSP contributions will resume.

The employing office must complete the Form TSP-41, Notification to TSP of Nonpay Status, annotating the beginning and ending dates of LWOP for employees who are returning to work and have TSP loans.

### **Long Term Care (LTC)**

Eligible individuals may apply at anytime with the full underwriting application. Employees already enrolled in LTC whose premium payments were withheld from their salary should have contacted LTC Partners during the LWOP status to arrange for payment of the premiums. The premiums may be withheld from compensation. Employees should notify LTC Partners upon return to a pay status.

If the LTC coverage terminated because the employee did not pay premiums or requested cancellation, LTC Partners may reinstate the coverage within 12 months from the termination date upon the employee's request. The employee will be required to reapply based on full underwriting, and LTC Partners will determine whether the employee is still insurable. If the employee is insurable, coverage will be reinstated retroactively to the

termination date and back premiums must be paid for that period. The premium will be the same as it was prior to termination.

### **Flexible Spending Accounts (FSA)**

Prior to LWOP, the employee had the option of prepaying the allotments. Employees who prepaid the allotments continued to be able to use the accounts. Health care expenses (not related to the injury) and dependent care expenses (meeting IRS guidelines) incurred during the period of LWOP can continue to be reimbursed.

If the Health Care FSA was not prepaid prior to the LWOP status, the account is frozen. The employee is not eligible for reimbursement of any health care expenses incurred during the period of LWOP until the plan year ends or until the employee returns to a pay status and begins making allotments, whichever occurs first. Claims may be submitted for eligible health care expenses (not related to the injury) incurred prior to the period of LWOP. If the employee has a Dependent Care FSA and had dependent care expenses that meet the IRS guidelines for eligible expenses (expenses incurred to allow the employee or employee's spouse to work or attend school) incurred during their absences, the employee can be reimbursed up to the account balance.

Upon return to work, during the same plan year, if the accounts were not prepaid, allotments will be recalculated based on the number of pay dates remaining in the plan year so that the account is paid in full on the last pay date of the year.

LWOP is not a Qualifying Status Change (QSC) and the employee is not permitted to change an election upon return to work. QSC is an IRS term used to determine if someone who participates in a FSA can change their election outside of open season.

The QSCs are very similar and usually identical to the QLEs that are used for PC. QSCs are such events as:

- Change in legal marital status (marriage, divorce, legal separation, annulment)
- Change in the number of dependents (birth or adoption of a child, youngest dependent aging up, etc.)
- Change in employment status that affects eligibility for benefits.

## **FORMER EMPLOYEE – DID NOT APPLY FOR DISABILITY OR OPTIONAL RETIREMENT**

### **Retirement**

The time in receipt of compensation is treated as a leave of absence and full credit is given as long as the employee eventually returns to a retirement-covered position. The time is fully creditable for computation and high-3 average salary purposes. No period of separation may be credited in meeting the requirement that a CSRS employee complete 1 year of covered service in the 2-year period immediately preceding a non-disability retirement.

In cases when compensation terminates prior to an employee returning to work, this could affect an employee's retirement coverage. The employing office must look at the length of the break (from the end of compensation to the date of rehire) to determine whether a CSRS employee is now subject to Social Security. Breaks of more than 365 days will cause the CSRS coverage to change to either CSRS Offset or FERS depending on whether the employee meets the 5-year test. In addition, employees who have a break in service of more than 3 days are eligible to elect FERS during their initial 6 months of returning to work.

If there is no break between compensation and return to work (365 days or less), the CSRS employee is not subject to the Social Security rules.

If the employee has nondeduction service or refunded service, the deposit rules under both CSRS and FERS apply.

Employees who return to work on less than a full-time schedule will have the annuity calculated using the rules for part-time service (includes those in receipt of LWEC when the SF 50 reflects full-time).

Employees covered by FERS who are receiving compensation during a period of separation will be eligible for an enhanced annuity computation if the sum of all qualifying periods of absence totals 2 months or more. The former employee must return to work and earn title to a FERS annuity. The enhanced benefit is computed as follows:

- The regular annuity computed under the appropriate FERS annuity formula,

**Plus**

- The enhanced benefit computed by multiplying the number of years and full months of qualifying service by 1 percent.

The enhanced formula does not apply to the FERS disability annuity computed using 60 percent or 40 percent of the high-3 average salary.

### **FEHB**

The FEHB enrollment transferred to DOL will be transferred back to the employing office when the employee returns to work on a full-time basis. Reemployment after a break in service of more than 3 days is a QLE for purposes of PC which means the employee has 60 days to change participation in PC. Waiving PC will allow the employee to cancel or change to self only at anytime. An employee who was not previously enrolled in FEHB may enroll within 60 days.

### **FEGLI**

When the employee returns to work (regardless of the work schedule) the employing office must notify OWCP/DOL by letter. The employing office must state the beginning and ending dates of the pay period the employee returned to work.

Upon separation, the employee's FEGLI coverage terminated and OPM should have received the SF 2821, along with the original FEGLI forms in the employee's OPF, if the employee was eligible to continue FEGLI coverage (5-year requirement). Upon receipt, OPM established a file on the employee. Upon return to work, the employing office must notify the OPM ROC, P.O. Box 45, Attn: Life Insurance, Boyers, PA 16017-0045. The ROC will send the original life insurance forms back to the employing office.

If the employee was ineligible to continue FEGLI coverage, the terminated coverage will be reinstated.

The value and cost of Basic life insurance and Option B will be based on the work schedule. This applies to all cases, even those when the employee is receiving LWEC. Within 31 days of returning to work, the employee is eligible to increase coverage if the break in service was at least 180 days.

### **TSP**

If the break in service was 30 days or less, the prior contribution amount will continue. As of Jul 2005, employees can elect or change the contribution amount at any time. Eligibility for the agency automatic 1 percent and agency matching is determined by whether the employee was previously eligible. FERS employees previously eligible for agency contributions will begin to receive those contributions immediately. FERS employees not previously eligible must meet a required waiting period. The date of rehire will determine when the employee would receive the agency contributions. If the employee is rehired between Jun 1 and Nov 30, the agency contributions will begin the following Jun. If the employee is rehired between Dec 1 and May 31, the agency contributions will begin the following Dec.

Employees who elected the withdrawal option of monthly installments must be informed that these installments will stop upon return to work.

### **LTC**

LTC is portable, therefore, the employee could have continued the coverage after separation. Premiums may be withheld from compensation.

If the employee had a break in service of 180 days or more they can apply for the abbreviated underwriting upon return to work.

If the LTC coverage terminated because the employee did not pay premiums or requested cancellation, LTC Partners may reinstate the coverage within 12 months from the termination date upon the employee's request. The employee will be required to reapply based on full underwriting, and LTC Partners will determine whether the employee is still insurable. If the employee is insurable, coverage will be reinstated retroactively to the termination date and back premiums must be paid for that period. The premium will be the same as it was prior to termination.

### **FSA**

Employees who return to work within 60 days after separation and before the end of the same tax calendar year will have their previous election reinstated. The employee will not be permitted to change their amount of the allotment unless they have a QSC. They will be required to make up any missed allotments. If the employee returns in another plan year they will be given another opportunity to make a new election.

If the employee returns outside of the 60 days, they will be provided a new election opportunity to enroll, but no later than Oct 1 of any plan year. The position must be one that conveys coverage.



## **RETIRED EMPLOYEE – OPM APPROVED DISABILITY OR OPTIONAL RETIREMENT**

### **Retirement**

An individual who chose annuity payments from OPM vs. compensation, is considered an annuitant for the purposes of title 5 U.S.C. 9902(j); the DoD hiring policy applies (DoD policy dated Mar 18, 2004, Subject: Employment of Annuitants). The individual must meet the specific hiring criteria (hard-to-fill, complete a specific project, unique skills, or for not more than 2087 hours to mentor). Under this policy, the annuity continues and the salary is not offset. The individual is not entitled to future retirement credit. The retirement coverage is FICA and the employing office is required to notify OPM of the annuitant's reemployment. If OPM finds a disability annuitant recovered from the disability or restored to earning capacity, the annuity will stop and the individual is no longer subject to the DoD reemployed annuitant policy. The employing office must determine the retirement coverage at the time the individual is found recovered from the disability or restored to earning capacity. For example,

CSRS disability retirement effective	12-31-03
Hired under the DoD policy	03-30-04
Found recovered	02-01-05

In this example, the retirement coverage on 03-30-04 is FICA. On 02-01-05, the retirement coverage is CSRS Offset. The break in covered service began 01-01-04 and ended 01-31-05 (more than a 365 day break in coverage, therefore, subject to Social Security).

An individual who chose compensation in lieu of annuity payments from OPM is not considered an annuitant for the purposes of title 5 U.S.C. 9902(j). The individual is not subject to the specific hiring criteria in the DoD policy Employment of Annuitants. However, the employee is considered an annuitant for OPM purposes. The retirement code would be

CSRS annuitant	'4' – None
CSRS Offset annuitant	'2' – FICA
FERS annuitant	'K' – FERS

An employee retired under CSRS or CSRS Offset may elect to contribute to the retirement system. The election is effective prospectively and the retirement code will change to '1' – CSRS or 'C' – CSRS Offset. If the disability annuitant is not found recovered or restored, the period of separation during which the individual received compensation (in lieu of a disability annuity) is not creditable unless they are reemployed for 5 continuous full-time years (or part-time equivalent) and elects a redetermined annuity. The employee is only entitled to a redetermined annuity if eligible for an

immediate annuity. Time spent in receipt of compensation prior to reemployment has no effect on a supplemental annuity. This means the employee will not receive credit for the time during receipt of compensation. Continued payment for LWEC is prima facie evidence that the individual is not recovered. Typically, OPM will not make a finding of recovery unless there is contravening medical evidence.

Public Law 108-92 provides an enhanced FERS annuity for certain employees who were in receipt of compensation. FERS employees who received compensation in lieu of annuity payments will be eligible for this enhanced annuity computation if the sum of all qualifying periods of absence totals 2 months or more. The former employee (annuitant) must return to work and earn title to a FERS annuity. The enhanced benefit is computed as follows:

- The regular annuity computed under the appropriate FERS annuity formula,

**Plus**

- The enhanced benefit computed by multiplying the number of years and full months of qualifying service by 1 percent.

If the original annuity terminates on reemployment, and the employee separates meeting the age and service requirements for a new FERS annuity, the employee may receive credit under the enhanced formula for qualifying periods of absence when they received compensation, including periods when they received compensation in lieu of an annuity.

If the original annuity does not terminate upon reemployment, and the reemployed annuitant works long enough to meet the eligibility criteria for a redetermined annuity under FERS (five years of actual, continuous, full-time reemployed service, or part-time equivalent), the employee may receive credit under the enhanced formula for qualifying periods of absence when they received compensation, including periods when they received compensation in lieu of an annuity.

The enhanced formula does not apply to the FERS disability annuity computed using 60 percent or 40 percent of the high-3 average salary. It also does not apply to a disability annuity recomputed at age 62 when the individual does not return to work.

**FEHB**

If the employee chose to receive the disability annuity in lieu of compensation, the FEHB will be transferred in from OPM. The employee has 60 days to waive PC. If the employee waives PC, the FEHB will transfer back to OPM. If the employee did not have FEHB as an annuitant, they may elect it within 60 days.

If the employee chose compensation in lieu of the disability annuity, the FEHB enrollment transferred to DOL will be transferred back to the employing office, as long as the employee returns to work on a full-time basis. Reemployment after a break in service of more than 3 days is a QLE for purposes of PC which means the employee has 60 days to change participation in PC. Waiving PC will allow the employee to cancel or change to self only at anytime. An employee who was not previously enrolled in FEHB may enroll within 60 days.

### **FEGLI**

If the employee chose the annuity in lieu of compensation, the Basic, Option A, and Option C coverage the employee had as an annuitant will automatically transfer in as an employee. If the employee had Option B as an annuitant, they must make an election to retain the coverage as an annuitant or elect it as an employee. This election must be made within 31 days of returning to work.

If the employee chose compensation in lieu of the annuity, when the employee returns to work (regardless of the work schedule) the employing office must notify OWCP/DOL by letter. The employing office must state the beginning and ending dates of the pay period the employee returned to work.

Upon separation, the employee's FEGLI coverage terminated and OPM should have received the SF 2821, along with the original FEGLI forms in the employee's OPF, if the employee was eligible to continue FEGLI coverage (5-year requirement). Upon receipt, OPM established a file on the employee. Upon return to work, the employing office must notify the OPM ROC, P.O. Box 45, Attn: Life Insurance, Boyers, PA 16017-0045. The ROC will send the original life insurance forms back to the employing office.

If the employee was ineligible to continue FEGLI coverage, the terminated coverage will be reinstated.

The value and cost of Basic life insurance and Option B will be based on the work schedule. This applies to all cases, even those when the employee is in receipt of LWEC. Within 31 days of returning to work, the employee is eligible to increase coverage if the break in service was at least 180 days.

### **TSP**

An individual who chose compensation in lieu of annuity payments from OPM is not considered an annuitant for the purposes of title 5 U.S.C. 9902(j). Therefore, since they may be subject to retirement coverage, they are also eligible to participate in TSP. If the break in service was 30 days or less, the prior contribution amount will continue. As of Jul 2005, employees can elect or change the contribution amount at any time. Eligibility for the agency automatic 1 percent and agency matching is determined by whether the employee was previously eligible. FERS employees previously eligible for agency

contributions will begin to receive those contributions immediately. FERS employees not previously eligible must meet a required waiting period. The date of rehire will determine when the employee would receive the agency contributions. If the employee is rehired between Jun 1 and Nov 30, the agency contributions will begin the following Jun. If the employee is rehired between Dec 1 and May 31, the agency contributions will begin the following Dec.

An individual who chose annuity payments from OPM vs. compensation is considered an annuitant for the purposes of title 5 U.S.C. 9902(j), therefore, will never be subject to retirement coverage in future appointments and are not eligible to participate in TSP.

Employees who elected the withdrawal option of monthly installments must be informed that these installments will stop upon return to work.

### **LTC**

LTC is portable, therefore, the employee could have continued the coverage after separation. Premiums may be withheld from compensation.

If the employee had a break in service of 180 days or more they can apply for the abbreviated underwriting upon return to work.

If the LTC coverage terminated because the individual did not pay premiums or requested cancellation, LTC Partners may reinstate the coverage within 12 months from the termination date upon the employee's request. The individual will be required to reapply based on full underwriting, and LTC Partners will determine whether the employee is still insurable. If the employee is insurable, coverage will be reinstated retroactively to the termination date and back premiums must be paid for that period. The premium will be the same as it was prior to termination.

### **FSA**

Individuals who return to work within 60 days after separation and before the end of the same tax calendar year will have their previous election reinstated. The individual will not be permitted to change their amount of the allotment unless they have a QSC and will be required to make up any missed allotments. If the individual returns in another plan year they will be given another opportunity to make a new election.

If the employee returns outside of the 60 days, they will be provided a new election opportunity to enroll, but no later than Oct 1 of any plan year. The position must be one that conveys coverage.